Manuscript

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THE CONTRACT FOR THE CARRIAGE OF GOODS: A POLYSYSTEMIC STUDY

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GENERAL CHARACTERISTICS OF THE STUDY

The relevance of the research topic. The relevance, timeliness, and importance of the topic of study manifests itself in several aspects.

Socio-economic aspect. Transportation of goods is of great socio-economic importance for Russia with its large territory. Timely delivery of raw materials necessary for work of the enterprises, delivery of manufactured products to consumers, the development of social infrastructure, etc depend on proper and effective regulation of contractual relations in this sphere. It is difficult to imagine a sphere of economy which would not depend on the effective functioning of the transport artery of the national economy (construction, engineering, aviation, manufacturing, etc.). The Governmental order of the Russian Federation from November 22, 2008 №1734-p[1] "About Transport strategy of the Russian Federation for the period till 2030" notes that transport links connect the country with the world community, being the material basis for the support of the foreign economic relations of Russia and its integration into the global economic system. Transport system ensures the conditions for economic growth, increase of competitiveness of the national economy and quality of life of the population, makes the regions closer to each other, improving their social capabilities.

The doctrinal aspect. Currently, there is no polysystemic study of contract for the carriage of goods. Most often the study subject includes civil law norms on the contract. More rarely this contract is investigated as part of the system of civil contracts. In the course of such studies , the separate issues of the relation of the contract for the carriage of goods with the concepts of "transaction" and "legal relationship" are touched upon. Meanwhile, its regulatory capabilities aren`t taken into consideration. Almost no research of the legal construction of this agreement can

[1] The Governmental order of the Russian Federation from 22.11.2008 № 1734-p "About Transport strategy of the Russian Federation" // Collection of Legislative Acts of the Russian Federation. 2008. No. 50. St. 5977; Collection of Legislative Acts of the Russian Federation. 2008. No. 52 (part 2) (amendment).

be found and all science is not working on the contract from the point of view of civil-legal forms.

The problem of legal structures is not well developed in the civil law. It does not distinguish between the theoretical and legislative structures as well as structures of specific legal measures, including civil law contracts.

The study of contractual terms and their role in the mechanism of contractual regulation is developed insufficiently. There is uncertainty whether the species forming contractual terms should be considered as significant.

There is no integrated approach to the study of the civil law forms. A unified concept of civil law forms and some of their types are not developed either.

This work partially serves the solution to these doctrinal problems.

The law enforcement aspect. In law enforcement, and first and foremost, in the judicial practice there are many problems related to legal qualification of a contract for the carriage of goods, its complicated structures. Actuality of reallife problems is indicated by a huge number of disputes related to breach of obligations arising from these contracts.

The law-making aspect. The absence of a clear definition of the contract about provision of the goods, the legal capacity of shippers` subscription service at transportation by non-generic use transport lead to the problems in law enforcement practice. Improvement of the provisions on the contract of affreightment is required. There is a need for the unification of the civil legislation on the carriage of goods. We need to improve the legislative provisions relating to the legal status of the consignee, and the liability for the breach of contract for the carriage of goods.

In our opinion, all the above-mentioned aspects testify to actuality of the conducted study.

The degree of scientific elaboration of the research topic. The study of contract for the carriage of goods at different time was conducted by T.E. Abova, V. V. Vitryansky, G. G. Ivanov, A. G. Kalpin, S. Y. Morozov, G. P. Savichev, O. N. Sadikov, B. L. Haskelberg, A. I. Hasnutdinov etc.

The number of PhD theses related to the study of this contract, which have been defended in recent decades include the works of Byankina A. M. "Legal regulation of the contract for the carriage of goods by road in the border areas" (M., 2012), A. A. Dovgopolova "Contract for the carriage of goods by rail under Russian law" (M, 2006), Eldashov G. A. "Civil-law regulation of the contract for the carriage of goods by road" (M, 2006), Karpeeva O. V. "Legal regulation of the organization of carriage of goods in the direct mixed communication" (Saratov, 2013), Rasulova A. V., "Legal problems of railway carriage of goods in the period of transition to a market economy" (M, 2003), Ushakova D. V. "Legal regulation of Maritime carriage of goods " (M, 2004), Shvetsova Y. V. "Commitment to rail freight" (Volgograd, 2005), etc.

The contract for the carriage as a legal construction was explored in his works of A. A. Ananieva. Problems of the theory of civil-legal measures were developed by N.A. Barinov, A. V. Malko, B. I. Puginsky, etc. The Study of the civil legal forms was carried out by V. A. Belov, O. A. Krasavchikov, etc.

However, complex polysystemic study of the contract of carriage was not carried out. Most often only the law of this contract is studied, but not the contract itself. None of the works of these authors consider the contract for the carriage of goods simultaneously as part of the system, as a legal construction as a legal measure and a legal form. The foregoing evidences of clearly insufficient degree of scientific elaboration of the stated study topic.

The purpose and objectives of the study. The purpose of the polysystemic research is to develop a comprehensive picture of the contract for the carriage of goods as an objective phenomenon of civil fact, performing simultaneously the functions of elements of system of contracts for the carriage, a legal structure, a legal measure and a legal form.

To achieve this purpose it is necessary to solve following research tasks::

1. To determine the role and place of the contract for the carriage of goods in the system of contracts aimed at the implementation and organization of transportation services.

2. To analyze the relationship of the contract for the carriage of goods with other civil law contracts.

3. To identify the mechanism of a contract impact on social relations on the transport of goods, to show the regulatory essence of the contract and its relationship with the concepts of "transaction" and "legal relationship".

4. To give the concept of contractual terms and identify their role in the structure of the legal structure of a particular contract for the carriage of goods.

5. In accordance with the civil law principle of unity and differentiation, to identify the relationship and differences between the legal structures of a particular contract for the carriage of goods, legislation on the contract for the carriage of goods and theoretical construction of the contract for the carriage of goods.

6. To identify the possibility of legal qualification of the contract for the carriage of goods as a contract in favor of a third party, adhesion contract, public and subscriber contracts.

7. To give a concept of civil law form. To identify and describe the legal forms of public relations for the carriage of goods acquired in the process of contract management.

8. To formulate proposals for improving the provisions of civil law on the contract for the carriage of goods.

The object of the study is social relations at the carriage of goods regulated by civil-law contracts.

The subject of the study is the normative legal acts regulating the activities of the parties to the contract for the carriage of goods, the works by legal scholars, the arbitration practice and the practice of conclusion and execution of civil contracts aimed at the implementation and organization of the services for the carriage of goods.

The methodological basis of the study. The set research tasks were solved

using a dialectical theory of knowledge, as well as systemic, structural, instrumental and methodological approaches.

The following general scientific and specific scientific methods of research were used: analysis and synthesis, analogy, induction and deduction, statistical, comparative legal and formal legal methods of legal research. In addition, a method of legal modeling was also used.

The regulatory basis of the study was the norms of Russian civil legislation and the provisions of the civil law of some foreign countries.

Empirical basis of the study is the materials of the practice of General jurisdiction courts and arbitration courts, other law enforcement entities. In particular, we describe the judgments and rulings of the Constitutional Court of the Russian Federation, Plenum of the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation, Federal arbitration courts of the East-Siberian, West-Siberian and North-Western districts.

The theoretical basis of the study. The theoretical basis of the study is the achievements of the domestic legal science (mainly civil law, commercial law and legal theory) that have found expression in the works of the scientists named above in the section " The degree of scientific elaboration of the research topic ". In addition, the conclusions made in the thesis are also based on the works of such scientists as T. E. Abova, M. M. Agarkov, M. K. Aleksandrov-Dolnik, S. S. Alekseev, A. A. Ananieva, V. K. Andreev, G. B. Astanovsky, N. A. Barinov, A. V. Barkov, R. S. Bevzenko, V. A. Belov, M. I. Braginsky, S. N. Bratus, A. G. Bykov, E. V. Vaskovsky, V. V. Vitryansky, A. E. Vorms, E. M. Vorozheikin, B. M. Gongalo, A. V. Dozortsev, V. A. Egiazarov, L. G. Efimova, O. S. Ioffe, M. F. Kazantsev, Y. H. Kalmykov, A. G. Kalpin, A. G. Karapetov, O. V. Karpeev, D. A. Kerimov, N. M. Korshunov, O. A. Krasavchikov, V. V. Kulakov, A. M. Martemianova, D. A. Medvedev, S. Y. Morozov, I. B. Novitsky, K. P. Pobedonostsev, I. A. Pokrovskii, V. F. Popondopulo, B. I. Puginsky,

Y. V. Romanets, A. N. Romanovich, G. P. Savichev, O. N. Sadikov, V. I. Serebrovsky, A. P. Sergeev, V. I. Serebrovsky, V. T. Smirnov, E. A. Sukhanov, M.

A. Tarasov, N. N. Tarasov, R. O. Khalfina, B. L. Haskelberg, A. I. Hasnutdinov, S. A. Khokhlov, I. V. Tsvetkov, M. Y. Chelyshev, A. F. Cherdantsev, H. I. Schwartz, L. I. Shevchenko, A. E. Sherstobitov, G. F. Shershenevich, Z. I. Shkundin, K. K.Yaichkov, V. F. Yakovlev.

Among the foreign scientists it is important to note such researchers as J. Ramberg, Seckel, K. Schmidt.

Scientific novelty of the study. The dissertation is the first qualification complex polysystem monographic study of the contract for the carriage of goods dealt with simultaneously as part of the system of contracts, as a legal measure, a legal form and a legal structure.

As a result of the study, for the first time in the science of civil law:

- differences between the theoretical legal construction of the contract for the carriage from the legal structures of a particular contract for carriage of goods and civil law on this contract have been identified;
- the differences between the legal structures of the transaction and the contract for the carriage of goods have been shown;
- legal constructions of the contract of affreightment and contract for the carriage in direct mixed connection have been recognized as a complicated legal construction of the contract for the carriage;
- systemic relationship of the contract for the carriage of goods with other civil law contracts has been identified;
- target and functional community of a group of contracts aimed at the implementation and organization of services for the carriage of goods have been identified;
- author's definition of a civil-legal form has been given, its new look has been revealed.

The main provisions submitted for defence:

1) The contract for the carriage of goods is an essential element of the system of contracts aimed at the implementation and organization of transportation of

goods. As the element of this system one should understand civil-legal institution, as it is indivisible for a given method of examination component that is functionally interrelated with other civil-law contracts of the specified orientation. The contract of affreightment and the contract for the carriage of goods in direct mixed connection are the lower-level elements of the system, because they are subspecies of the contract for the carriage of goods.

2) One should distinguish the transaction on the conclusion of the contract for carriage of goods and the contract itself. The contract for the carriage of goods, as a legal measure, cannot be identified neither with the transaction nor with the legal relationship.

3) One should distinguish between legal construction of the particular contract for the carriage of goods, its theoretical legal structure and legislative legal structure. Under a theoretical legal construction of the contract for the carriage one should understand a mental model scheme of interaction with the maximum degree of abstraction of the rights and duties of the parties resulting from the generalization of the solution to the legal situations occurring at the movement of material objects with the help of self-moving vehicles

4) Theoretical construction of the contract for the carriage can be represented as a contract by which one party (the carrier) undertakes for a fee to provide another party services for the movement of material objects (goods, passengers, luggage) from one point in space to another by means of self-moving vehicles legally belonging to it.

5) Terms of the contract are the agreed to by the parties and mandatory for them rules (volitional models of behavior that determine the dependence of measures of possible and proper behavior of one side of a contractual relationship from the agreed boundaries of the possible and proper behavior of the other party.The term of price is a type forming for the contract for the carriage of goods, but it cannot be identified with a significant condition of this contract. Under paragraph 2 of article 784 of the RF Civil code's general conditions of carriage, which are determined by transport charters and codes, other laws and rules published in accordance with them,

are not identical to the essential terms.

6) The terms under peremptory norms can be divided into two main groups, i.e. those present as elements in the legal structure of any particular contract for the carriage of goods and optional ones, whose the appearance depends on the discretion of the parties to the contract.

Dispositive norms of law affect the structure of the legal structure of a particular contract for carriage.

7) The contract of affreightment is a complicated construction of the contract for the carriage of goods. The complication occurs due to: 1) the addition of a term on granting capacity of the vehicle or its parts; 2) the potential inclusion of a term on an option; 3) the possibility of excluding the terms of goods delivery to the consignee.

8) One can't consider the carrier that concluded the contract for the carriage of goods in direct mixed connection to be a representative of the consignor, because in such interpretation of the carrier in the contract should be secondary right, providing the ability to commit legal actions on behalf of others that does not presuppose the existence of any counter obligation, which is not true. Legal construction of the contract for carriage of goods in direct mixed connection is unified. Compared with the usual contract for the carriage, it is complicated by the condition, which is provided by article 313 of the RF Civil code. Content of this provision is the devolution of obligations of the debtor (the contracting carrier) to third parties.

9) Under the legal form one understands: 1) legal sources (external form of the right itself); 2) the structure of the system of law (the inner form of the right); 3) the ideal model of social relations (its elements), resulting from setting the boundaries of the positive obligations, of permissions and bans for participants of public relations, reflected in measures of their possible or proper behavior.

10) It is necessary to recognize the existence of independent (non-accounts payable responsibilities) legal form – secondary need, which is expressed as a measure of the required behaviour of the owner of secondary rights (consignee),

aimed at creating conditions for proper implementation of the legal possibilities contained in the law.

11) The consent of the owner of the railway transport infrastructure for the acceptance of the application by the carrier (article 11 UIT) cannot be an element of acceptance of the carrier. The secondary right of the carrier and the secondary right of the owner of transport infrastructure are one in form but different in content rights. In this invalid is the assertion that one of these rights is an element of the other. It is impossible to talk about "split" of a single secondary right, since these rights bind different subjects by the state of lawlessness.

12) The analysis of the legal form of the secondary rights leads to the conclusion that the consignor and the consignee in the contract for the carriage cannot be regarded as the one party, and the contract for the carriage is not a composite obligation.

13) The limits of the legal capacity of the consignor can vary depending on his professionalism. The situation about the recognition of the accepter as a weakness by the court should not apply to the contract for the carriage of goods in which the offer is submitted by the consignor, and the acceptor is a carrier.

14) It is proposed to make the following changes to the legislation:

14.1. The obligation to obtain goods should be excluded from the transport charters and codes. This will allow to consider, in accordance with the rules and meaning of the RF Civil code: 1) the contract for the carriage of goods as a contract in favor of a third person; 2) the obligation of the consignee on acceptance of performance from the carrier as a payable one. It is necessary to bring the relevant rules of the transport legislation to provide for the possibility of bringing the consignee liable for failure or delay in the acceptance of the goods in accordance with paragraph 2 of article 406 of the RF Civil code.

14.2. The possibility of a subscription service of consigners at transportation by transport of non-generic use should be provided by the law.

14.3. It is proposed to amend part 1 of article 791 of the civil code as follows:

According to the contract on presentation of goods for transportation, the carrier in accordance with the terms of the received from the shipper application is obliged to give him a proper and suitable for transportation of the corresponding goods vehicle, and the sender is obliged to present the goods for transportation.

The deadline for the submission of vehicles for loading and providing the goods for transportation, as well as the volume requirements of the load are set by the application (order), the contract for the carriage and (or) contract on the organization of transport.

Scientific and practical significance of the study. The scientific significance of the dissertation study lies in the fact that its provisions form a holistic view of the contract for the carriage of goods.

The findings in the study supplement and develop these sections of the science of civil law like civil law system, general provisions on obligations, including the general provisions on contracts, certain types of civil contracts.

The scientific significance of the study also lies in the fact that it can serve as a basis for further in-depth, detailed development of the theory of contract for the carriage of goods. The results of the study will also contribute to the development of some common problems of civil law theory, including problems associated with the development of the theories on the civil law forms, legal measures, the theory of secondary rights, and the theory of civil law structures, as well as with the systematization of civil law contracts.

The practical importance of the study is that its results can be used in law-making activities at the codification of civil law and in the application of laws activities, in particular by the courts when considering disputes arising from the contract for the carriage of goods, contract work in commercial and other organizations, as well as in teaching.

Approbation of the study results. The dissertation was discussed at the Department of civil law and process of Ulyanovsk state University.

The main provisions and conclusions are reflected in scientific articles (3 of

them are in leading peer-reviewed scientific journals, where, in accordance with the established requirements the basic scientific results of dissertations on competition of a scientific degree of candidate of Sciences must be published) and other publications by the author (7 publications in total with a total volume of a 3.9 p.s.), were presented and discussed in different scientific national and international forums and conferences: Actual problems of civil and business law: II Interuniversity scientific-practical conference of students, graduate students, applicants and teachers (Moscow, 2010); Youth and inter-ethnic relations: constructive and deconstructive tendencies: the II All-Russian youth conference (St. Petersburg: St. Petersburg state University, 2011); Actual problems of civil and business law: IV Interuniversity scientific-practical conference of students, graduate students, applicants and teachers (Moscow: Russian State Tax Academy of the Ministry of Finance of the Russian Federation, 2011); Actual problems of civil and business law: V annual All-Russian scientific-practical conference of students, graduate students, applicants and teachers (Moscow: Russian State Tax Academy of the Ministry of Finance of the Russian Federation, 2011); Modernization of legal education: problems and prospects: All-Russian scientific-practical conference dedicated to the 65th anniversary of the Institute of law of Bashkir State University and the higher legal education in the Republic of Bashkortostan (Ufa: Bashkir State University, 2014); 20 years the Civil code of the Russian Federation: results, tendencies and prospects of development: III International scientific-practical conference (Ulyanovsk: Ulyanovsk State University, 2014); Russia and the world: a new vector: Gaidar forum (Moscow: Russian Academy of National Economy and State Service under the President of the Russian Federation and the Economic Policy Institute, named after Yegor Gaidar, 2015); Cooperation in science and innovations: international scientific-practical conference of the faculty, staff, doctoral students and postgraduates of higher educational institutions (Moscow: Russian University of Cooperation, 2015).

The structure of the dissertation. The dissertation consists of an introduction, three chapters, including 8 paragraphs, a conclusion, and a bibliography.

MAIN CONTENT OF THE WORK

In the **introduction** the urgency of the chosen topic is substantiated, the degree of scientific elaboration is indicated, the aims, tasks, object and subject of study are defined, a brief description of its' methodological, theoretical and regulatory foundation is given, the main points are set out, which express the scientific novelty of the work, its theoretical and practical importance is shown and data on the validation of research results are provided.

The first chapter - "The contract for the carriage of goods as part of a system of transport contracts, and as a legal measure" - consists of three paragraphs. As part of this chapter they define the role, place and function of the contract for the carriage of goods in the system of civil law contracts, aimed at the implementation and organization of freight services. Regulatory contract opportunities are shown.

The first paragraph - **"The contract for the carriage of goods as part of the transport system of contracts"** - draws attention to the fact that the purpose of the system of contracts that are standardized under Chapter 40 of the Civil Code "Transportation" is the implementation and organization of services for the transportation. Targeting contracts of the system assumes their differentiation into two groups: 1) contracts aimed at the implementation of services for transportation; 2) contracts aimed at organizing transportation. The first group includes: contract for the carriage of goods, passenger transportation contract; contract of affreightment (charter), contract for the carriage in the direct mixed connection. The second group includes: contract on the presentation of goods to transportation, contract on the transportation of goods, key contracts, contracts for centralized delivery (export) of goods.

The first of these sub-purposes of the second level of the system (organization of services for the transportation) can be decomposed in the purposes aimed at the implementation of services for the transport of: 1) goods only; 2) only passengers; 3)

both passengers and goods. Accordingly, the third level of the implementation of the objectives of the first of these three groups provides an element of the system as contract for the carriage of goods. The second target group is the contract for the carriage of passengers, and the third - the agreement of chartering (charter) and contract for the carriage in the direct mixed connection.

The contracts aimed at providing services for the transportation of goods include the elements of the first and third target subgroups of the system: contract for the carriage of goods, contract of affreightment and the contract for the carriage of goods in the direct mixed traffic.

The contract for the carriage of goods is closely linked in a single system with its other elements. With the contract of affreightment and the contract for the carriage of goods in direct mixed connection contract for the carriage of goods is directly linked as a type of contract with its subtypes. There is a direct relationship of the contract for the carriage of goods transportation with individual contracts, which are elements of a subsystem of organizational contracts. It is, in particular, about the contract on the presentation of goods to transportation and the contract on the organization of goods transportation. In the dissertation is convincingly refuted the point of view according to which the contract for the presentation of goods to transportation should be considered as: 1) service contract; 2) a preliminary contract; 3) contract for the carriage of goods with a condition precedent. The attempt to present the contract for the presentation of goods to be transported as part of the contract for the carriage of goods item or suspensive terms, overloades the last of these contracts with uncharacteristic functions.

The relationship of the contract for the carriage of goods with the contract for the organization of goods transportation is mediated and acts not always, but only when there is the need for systematic freight. Between these two elements of the contract will always be another element of the system - a contract for the presentation of goods to transportation, which as well as the contract for the organization of goods transportation is organizational. It is noted that the current legislation does not directly decide on the possibility of concluding a contract for the carriage of goods if

there is contract for the organization of goods transportation and the lack of application. It is therefore proposed to present p. 1 article. 791 of the Civil Code as follows:

According to the contract for the presentation of goods to transportation, carrier in accordance with the terms adopted by the senser must submit an application to it serviceable and suitable for the carriage of goods vehicles and the sender is obliged to present the goods to be transported.

The deadline for the vehicles to be loaded and presentation of the goods for carriage, as well as the amount of the charge set load application (order), a contract for the carriage and (or) contract on the organization of transport.

In the second section - "**Civil contract as a regulator of social relations**" - contract for the carriage of goods is seen as a legal means. The importance of such an analysis is underlined, because it is impossible to correctly build a concrete structure of the contract without understanding its purpose tool.

The contractual effects are manifested in the fact that the parties of the contract have to obey the rules of the contract in which both embodied the will of parties to the contract and the strength of the state. You can recognize the validity of the formula, "no rules - no contract." Under the rules of the contract we refer the contract terms. The essence of the contract terms reflects the attitude of the boundaries of behavior depending on the one party by the possible measures and proper behavior on the other party. It is important that as a result of harmonization of the conditions determined by the parties is not just the amount of money, kilometers or days, and define themselves by permission of the rights, restrictions and prohibitions.

It is proposed to give the following definition: Terms of the contract is agreed by the parties and binding rules for them (volitional model) of behavior that determine the dependence of possible measures and the proper conduct of one party to the contractual relationship of the agreed boundaries of the possible and proper conduct of the other party.

Basing on this definition, we cannot consider the terms of the contract as its subjects, because the terms are the product of mental activity of subjects themselves.

It is illegal to include among the terms of the rules on the form of the contract, since the form is the only way to express contractual terms, but not by the terms. Subjects of the contract, their details and so on, can act only structural elements of the document, referred to the contract, but no concrete contract.

In the third section - **"Value of contract for the goods carriage with the concepts "transaction" and "legal relationship""** - the logic ban on identification of the contract for the carriage of goods with the transaction and relationship is justified

The reasons for the civil contract not to be equated with the transaction are the following. Deal is the conclusion of the contract, but not the contract itself. The deal, as a legal fact, unlike a civil contract is not able to carry out contractual regulation, since it does not contain rules of conduct. The legal fact cannot obtain the subject of its regulation. In addition, under this approach it is not clear what "triggers" contractual rules of conduct. The content of the contract and legal facts are fundamentally different. Their purpose in the mechanism of legal regulation is also various.

By the time there is a contract, the legal act ceases to exist because it has fulfilled its mission - launched contractual rules. Conclusion of the contract is to overcome the conflict with a view to reaching a contract. Therefore, if there is a conflict, there is no contract, and vice versa. The deal for the conclusion of the agreement sets the end point in the process of overcoming the conflict. The parties' contract arises when this point has already been set.

The notion of legal fact applicable to the normative and not contractual regulation. The mechanism of legal regulation serves as a "trigger" that activates the rule of law, but not the contractual rules. The legal structure of contract and legal relationship also differ. As we have already pointed out, the construction elements of the contract are the terms. The construction consists of legal entities, the object and the subjective rights and duties.

The contract for the carriage of goods cannot be equated with a legal relationship basing on the following considerations. If the contract is a legal means, it is an instrument of influence on social relations. Based on the legal definition of the contract, the contract aims at emergence, modification or termination of civil rights and duties (art. 420 of the Civil Code). The focus of the contract to the result, ie, to the emergence and development of the relationship of obligation, says that it cannot be matched with that obligation. This is due to the fact that in the chain of "goal-means-result" measures always precedes the result. It also follows from paragraph 2 art. 420 of the Civil Code, according to which to the obligations **arising from the contract, refet** the general provisions on obligations. Thus, the legislator distinguishes between the contract and arising from its legal relationship of obligation.

Contract as a regulator is placed with a commitment on the different stages of the mechanism of contractual regulation. We can consider the ratio of the contract and the legal relations arising from it, as a model and object of modeling, since the contract concludes volitional model of behavior of contractual relationship members.

Complexity is created by the fact that the appearance of contract and contractual legal relationship occur simultaneously after the transaction will be made on the conclusion of the contract. Here there is a distinctive feature of the contractual mechanism of regulation of the legal (regulatory) mechanism of regulation. As it is known the latter is characterized by the fact that the fixed in norm the rule of conduct there before as a legal fact occurred, and even more so, long before there was a legal relationship. It seems to us, there is nothing to fear. And the established by the contract rules of conduct, and to resolve their attitude may occur at the same time, as long as the legal relationship arose before the contract is concluded.

Singling out the contracts on the basis of result orientation should be remembered that the contract is a legal measure which is used to achieve the result. For example, a contract for the carriage is aimed at rendering paid services on shipping. However, as soon as it comes to the civil contract as a whole, immediately repeated are the provisions of art. 420 of the Civil Code, that the contract is aimed at

the emergence, change or termination of civil rights and responsibilities. In our view, in the definition of the contract should be reflected the focus on the transfer of property, execution of works, provision of services and the achievement of other similar legal results.

The second chapter - "The legal structure of the contract for the carriage" - includes three paragraphs. In this chapter the theoretical and legislative legal construction contract for the carriage and the legal structure of a particular contract for the carriage of goods are discussed.

In the first paragraph - "**Theoretical legal structure of contract for the carriage"** - revealed signs generalizing legal structures, clarified their classification. It was concluded that neither legal structure in general, nor the construction of a particular contract can be identified with the legislative structure (model).

Attention is drawn to the fact, that in science there is an unjustified opposition of theoretical and regulatory structures. If one does not identify the regulatory structure with fragments of positive law, they cannot be but theoretical constructs (mental images). If the theoretical structure has been translated into legislation, they should be called not regulatory but legislative. The legislative model should always be compared with the theoretical model, and in this sense is based on it. Theoretical design has a higher degree of abstraction and reflects only the most essential features of the contract for the carriage. It is a coarsening of the way, as the legislative model, and a specific contract for the carriage.

Under the theoretical legal structure the contract for the carriage should be understood as having the maximum degree of mental abstraction model scheme of interaction of the rights and duties of its parties, which is the result of a generalized solution of legal situations prevailing when moving material objects with the help of self-moving vehicles.

The main features of the contract for the carriage (its theoretical structure) which as a result of a thorough and long-term screening of regulatory and scientific material have reached such a degree of certainty that they can be recognized at a given time immutable and inviolable, should be attributed directionality of the contract,

expressed in its subject. According to the contract for the carriage, services are always carried in movement of material objects (including people) from one point in space to another by means of self-moving vehicles. This orientation is typical for any contract for the carriage, whether it is a contract for the carriage of goods, the contract for the carriage of passengers and luggage, contract of affreightment, or the contract for the carriage in the direct mixed connection.

One of the important features of the contract for the carriage are: 1) the presence of the carrier's liability for goods and luggage, as well as for the safety of passenger transport; 2) vehicles belonging to the carrier. In this case, we understand under the carrier such a person involved in the carriage (actual carrier). These circumstances are important to consider in the apportionment of services for passengers and luggage or goods and mail delivery. Clientele of bodies of communication (the senders and recipients) can not submit any claims to the transportation authorities. Postal organization, opposed to the carrier shall not bear limited liability in cases of non safety of good detection. Contract for the services of sending e-mail correspondence is not intended to service the process of moving the goods in space, and providing a link between the sender and recipient of the correspondence. In most cases, transportation of mail is carried in vehicles belonging to the postal organization and is mediated by the towing contract.

The legal structure of the contract for the carriage having the highest degree of abstraction, may be defined as follows:

The contract for the carriage is the contract, whereby one party (the carrier) is obliged for a fee to provide the other side of the service for movement under the responsibility of material objects (of goods, passengers, luggage) from one point in space to another by means of legally belonging to him self-moving ground vehicles .

The given definition of a theoretical legal structure of the contract for the carriage may be specified in the legal structures of contracts for the carriage of goods, contract of affreightment, transport of live mixed traffic, passengers and luggage. The meaning of separation of such a legal structure is that it can serve as a model (standard) when deciding on referring to a treaty to the contract for the carriage, and

at the same time allow distinguishing between contracts for the carriage of certain types of contracts, including transport.

In the second paragraph - **"The influence of the legislative structure of the contract for the goods transportation on the legal structure of a particular contract,"** - notes that the legislative structure of goods transportation conract must, on the one hand, objectify its theoretical construction, and on the other hand, define the contours of the main elements of a particular contract of carriage, procedures for the establishment and use of this legal instrument.

The legislative structures include as elements set forth in the legislation:

- general definition of the contract for the carriage of goods, reflecting the legal result, to achieve this contract, subject structure, a general characteristic of the contract;
- essential terms of the contract;
- imperatively established rights and obligations of the parties;
- dispositive established rights and obligations of the parties;
- general terms of carriage and the boundaries of specific terms, including the procedure of determining freight rates;
- classification of varieties of goods contract for the carriage;
- elemental structure;
- indication on the form of construction of a specific contract;
- general rules on liability for breach of contract terms;
- mechanisms of its functioning, including the legal procedure of conclusion and execution of the contract;
- ways of resolving disputes.

Although the constructions of the legislative model of the contract for the carriage and the legal construction of the particular contract for the carriage containing rules developed by the parties are not identical, but they are interdependent. Despite the fact that the implementation of the law on contracts does not create contractual regulation itself, legislative legal structure establishes a framework limiting the scope

of discretion of parties when constructing a specific contract.Thus, it follows that the limits of possible and proper behavior established by law may not be unnecessarily expanded by the inclusion in the construction of the contract for the carriage the procedure of its conclusion. Thus, we believe that we need to divide proper legal construction of the contract for the carriage and the legislative legal structures associated with the emergence, modification and termination of contract for the carriage. The legislative construction of the contract for the carriage is independent in relation to the legislative model of the contract, although it is derived from it.

When considering individual elements of legislative legal construction of the contract for the carriage of goods, it is concluded that the data characterizing the subject of the contract (amount of goods, the destination), are not terms of the contract, but its elements. It is proved that the term on the price of the contract for the carriage of goods, while it is type forming for this type of contract, is not a significant one. General conditions of carriage, which in accordance with paragraph 2 of article 784 of the Civil code are determined by transport charters and codes, other laws and rules published in accordance with them, should not be identified with the essential terms of the contract.

The terms under peremptory norms can be divided into two main groups, i.e. those present as elements in the legal construction of any particular contract for the carriage of goods and, optional ones, whose the appearance depends on the discretion of the parties to the contract.

Dispositive law norms, first, affect the structure of the legal construction of a particular contract for the carriage. If the law on the contract for carriage has dispositive rules concerning the content of either term of the contract, then they determine the presence of the appropriate term, as a mandatory element in the construction of the particular contract for the carriage. Secondly, the structure of the legal construction of the contract for the carriage does not depend on the choice of behavior, embodied in the dispositive norm, by the parties to the contract .

The third section, "**Complicated legal constructions of the contract for the carriage**" states that the contract of affreightment is a complicated construction of the

contract for the carriage of goods. The complication occurs due to: 1) the addition of a term on granting capacity of the vehicle or its parts; 2) the potential inclusion of a term on an option; 3) the possibility of excluding the terms of goods delivery to the consignee.

It is proved that one can't consider the carrier that concluded the contract for the carriage of goods in direct mixed connection to be a representative of the consignor, because in such interpretation of the carrier in the contract should be secondary right, providing the ability to commit legal actions on behalf of others that does not presuppose the existence of any counter obligation, which is not true. The assertion that by signing the contract, the consignor gives the rights and obligations to the carrier, means denying the fact that the rights and obligations are acquired by the parties according to their will and not the will of the contractor.

Legal construction of the contract for carriage of goods in direct mixed connection is unified. Compared with the usual contract for the carriage, it is complicated by the condition, which is provided by article 313 of the RF Civil code. Content of this provision is the devolution of obligations of the debtor (the contracting carrier) to third parties.

The dissertation concludes that the legal constructions of the specific contracts for the carriage of goods shall as elements contain the same terms, including the price of carriage of goods, which is determined on the basis of tariffs (item 2 of article 790 of the Civil code). The use of special contractual construction of a public contract determines the content of the terms on responsibility for the specific contracts for the carriage of goods.

Legal construction of the contract for the carriage of goods may be complicated by the use of the framework contract. At the same time, terms specific to the contract for the carriage of goods must meet the terms of the framework contract. The terms of the contract on organization of carriage of goods which the parties have not included in the specific contract for the carriage of goods, complete legal construction of the latter.

The possibility of a subscription service of consignors at transportation by transport of non-generic use should be provided.

The third Chapter - "Contract of carriage of goods as a legal form" - consists of two paragraphs. In this Chapter the concept of legal form is given, its relation to the form of law and legal construction is determined, different legal forms of relationships regulated by the contract for the carriage of goods are identified and characterized.

The first paragraph - **"The concept of legal form and its individual types, determining the extent of the required behaviour of participants of the contract for the carriage (payable obligation, secondary need)"** gives the author's definition of the legal form. Under the legal form one understands: 1) legal sources (external form of the right itself); 2) the structure of the system of law (the inner form of the right); 3) the ideal model of social relations (its elements), resulting from setting the boundaries of the positive obligations, of permissions and bans for participants of public relations, reflected in measures of their possible or proper behavior.

It is concluded that such a legal form as accounts payable obligations is a measure of legally required behaviour of an active liabilities member(creditor), aimed at creating terms for the proper exercise of its right are present with the carrier, the consignor and consignee.

The obligation to obtain goods is offered to be excluded from the transport charters and codes. This will allow to consider, in accordance with the rules and meaning of the RF Civil code: 1) the contract for the carriage of goods as a contract in favor of a third person; 2) the obligation of the consignee on acceptance of performance from the carrier as a payable one. It is necessary to bring the relevant rules of the transport legislation to provide for the possibility of bringing the consignee liable for failure or delay in the acceptance of the goods in accordance with paragraph 2 of article 406 of the RF Civil code.

The existence of independent (non-accounts payable responsibilities) legal form – secondary need, which is expressed as a measure of the required behaviour of the

owner of secondary rights (consignee), aimed at creating conditions for proper implementation of the legal possibilities contained in the law is recognized.

The second paragraph **-"Certain legal forms defining the measure of possible behaviour of participants of the contract for the carriage of goods (secondary rights and legal capacity)"** - focuses on the fact that the legal form of secondary rights is formed and at the time of conclusion, and at the time of execution of the contract for the carriage of goods. In particular, it is noted that the consent of the owner of the railway transport infrastructure for the acceptance of the application by the carrier (article 11 UIT) cannot be an element of acceptance of the carrier. The secondary right of the carrier and the secondary right of the owner of transport infrastructure are one in form but different in content rights. In this invalid is the assertion that one of these rights is an element of the other. It is impossible to talk about "split" of a single secondary right, since these rights bind different subjects by the state of lawlessness.

Secondary rights of the carrier associated with the acceptance of the application and offer acceptance according to the contract for the carriage of goods, have the subjective rights arising from two different contracts as their object.

The parties to the contract for the carriage of goods have no legal possibilities to force the third party to exercise their secondary right. However, this does not mean that secondary law, in contrast to the subjective one, cannot be breached.

The consignee during the period of possession of the secondary right may not have any subjective duties, and is in a state of connectedness with the consigner. The analysis of the legal form of the secondary rights leads to the conclusion that the consignor and the consignee in the contract for the carriage cannot be regarded as the one party, and the contract for the carriage is not a composite obligation.

It is concluded that the limits of the legal capacity of the consignor can vary depending on his professionalism. The situation about the recognition of the accepter as a weakness by the court should not apply to the contract for the carriage of goods in which the offer is submitted by the consignor, and the acceptor is a carrier.

In **conclusion**, the dissertation study results are summarized, the main theoretical conclusions are formulated and practical suggestions for improving current legislation are made.

The following works were published on the topic of the dissertation:

In journals recommended by WAC Ministry of Education and Science of the RF for publication of the results of dissertational studies:

1. *Shaydullina V. K.* Legal construction of the contract for the carriage / V. K. Shaydullina. // Law and right. – 2014. No. 9. p. 77-81. (0.2 p.s.).
2. *Shaydullina V. K.* Civil-law contract and its terms / V. K. Shaydullina. // Law and state: theory and practice. – 2014. No. 9. (0.2 p.s.).
3. *Shaydullina V. K.* Expression of instrumental functions of civil contract in the process of the mechanism of contractual regulation on the example of the contract for the carriage of goods / V.K. Shaydullina. // Law and state: theory and practice. 2014. No. 10. (0.2 p.s.).

Materials of international and all-Russian scientific-practical conferences:

1. *Shaydullina V. K.* Legal construction of the contract for the carriage / V. K. Shaydullina // 20 years of the Civil code of the Russian Federation: results, tendencies and prospects of development: III International scientific-practical conference (Ulyanovsk, December 12, 2014): a collection of articles, Moscow: Prospect, 2015 (0, 2 p.s.).
2. Harmonization of legislation in the field of transportation (the example of rail transport) // Cooperation in science and innovations: international scientific-practical conference of the faculty, staff, postdoctoral and postgraduate students: collection of articles. Moscow: Russian University of cooperation, 2015(0,2 p.s.).

Other items:

3. Shaydullina V. K. Actual problems of insurance of entrepreneurial risks of the carrier in the Russian Federation / V. K. Shaydullina // Law: traditional view

and development prospects: collection of articles. Kiev: Publishing House Kuprienko S. A., 2014. (0, 2 p.s.).

4. Shaydullina V. K. To the question of the delineation of the contract for the carriage of goods from the contract of affreightment / V. K. Shaydullina // Student science-2014: IX Moscow scientific-practical conference, a round table "Theoretical and practical studies in the sphere of legal regulation of business" collection of articles. Moscow: Financial University under the Government of the Russian Federation, 2014 (0, 2 p.s.).